

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JAMES TAMBONE and
ROBERT HUSSEY,

Defendants.

Civil Action No.: 05-10247 NMG

DEFENDANT JAMES TAMBONE'S
MOTION TO DISMISS

Pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, defendant James Tambone ("Mr. Tambone") hereby moves to dismiss the Complaint, dated February 9, 2005, filed against him by the Securities and Exchange Commission (the "Commission").

The Complaint accuses Mr. Tambone of (i) committing fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; (ii) committing fraud in violation of Section 17(a) of the Securities Act of 1933; (iii) aiding and abetting Columbia Management Advisors, Inc.'s fraud in violation of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"); and (iv) aiding and abetting Columbia Funds Distributor Inc.'s fraud in violation of Section 15(c) of the Exchange Act ("Section 15(c)").

The Complaint, however, fails to state a claim for any violations under the Section 10(b), Rule 10b-5, or Section 17(a) because the Commission has failed to plead with particularity that Mr. Tambone (1) made a specific misstatement or omission when he had a duty to speak or (2)

acted with scienter. In addition, the Complaint fails to state a claim for aiding and abetting liability under the Advisers Act and Section 15(a) because the Commission has not pled with particularity that Mr. Tambone was aware or knew that his actions were part of an overall improper or illegal course of conduct or substantially assisted that course of conduct.

In further support of this motion, Mr. Tambone relies on Defendant James Tambone's Memorandum in Support of Motion to Dismiss, which is incorporated herein by reference in its entirety and is filed contemporaneously herewith.

WHEREFORE, Mr. Tambone respectfully requests this Court to enter an order:

1. dismissing the Commission's "**FIRST CLAIM**" in the Complaint (Section 10(b) and Rule 10b-5 violation claim) against Mr. Tambone;
2. dismissing the Commission's "**SECOND CLAIM**" in the Complaint (Section 17(a) violation claim) against Mr. Tambone;
3. dismissing the Commission's "**THIRD CLAIM**" in the Complaint (aiding and abetting Advisers Act violation claim) against Mr. Tambone;
4. dismissing the Commission's "**FOURTH CLAIM**" in the Complaint (aiding and abetting Section 15(c) violation claim) against Mr. Tambone; and
5. granting such further relief as this Court deems appropriate.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), defendant James Tambone respectfully requests an oral argument on Defendant James Tambone's Motion to Dismiss.

JAMES TAMBONE,

By his attorneys,

/s/ David G. Thomas
A. John Pappalardo (BBO #388760)
John A. Sten (BBO #629577)
Gina Dines Holness (BBO #557714)
David G. Thomas (BBO# 640854)
GREENBERG TRAURIG, LLP
One International Place, 20th Floor
Boston, MA 02110
(617) 310-6000

Dated: April 15, 2005

LOCAL RULE 7.1(A)(2) CERTIFICATE

I, David G. Thomas, hereby certify that I, along with others, conferred and attempted in good faith to resolve the issues relative to Defendant James Tambone's Motion to Dismiss; however, were unable to so resolve those issues.

/s/ David G. Thomas
David G. Thomas

CERTIFICATE OF SERVICE

I David G. Thomas, hereby certify that, on April 15, 2005, I served a copy of the foregoing (1) by hand to Luke Cadigan, Esq., Senior Trial Counsel, Securities and Exchange Commission, 73 Tremont Street, 6th Floor, Boston, MA 02108, and (2) by overnight mail to James Loonam, Esq., Clifford Chance, 31 West 52nd Street New York, NY 10019, counsel for co-defendant Robert Hussey.

/s/ David G. Thomas
David G. Thomas